

## **CHAPTER 12**

### **PROPERTY MANAGEMENT**

#### **Inventory**

A school corporation which owns facilities used as attendance centers for students shall maintain an itemized statement of the appraised value of all buildings owned by the school corporation. Beginning July 1, 1976, the appraisal shall be updated at least one time every five years (282.24).

#### **Use of School Property**

The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar societies, for parent-teacher associations, for community recreational activities, community education programs, election purposes, other meetings of public interest, public forums and similar community purposes; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils, except that in the case of community education programs, any compensation necessary for programs provided specifically by community education and not those provided through community education by other agencies or organizations shall be compensated from the funding provided for community education programs (297.9).

Any compensation for such use shall be paid into the general fund and be expended in the upkeep and repair of such school property, and in purchasing supplies therefor (297.10).

In carrying out the provisions of chapter 29C regarding emergency management services, the governor and the director of the department of public defense, and the executive officers or governing boards of political subdivisions of the state shall utilize, to the maximum extent practicable, the services, equipment, supplies and facilities of existing departments, officers, and agencies of the state and of political subdivisions at their respective levels of responsibility (29C.12).

Boards of directors of school corporations may authorize the use by senior citizen organizations of school meal facilities subject to reasonable rules and regulations of the board. Such use shall not interfere with the use of the facilities for public school purposes. The board may charge for such use an amount not to exceed the cost to the district (283A.8).

The school board may grant the use of a school room to the community for public library purposes unless the electors of the district have voted otherwise (1910 Op. Att'y Gen. 57 (#9-3-10)).

The school board or the electors of a school district have no authority to authorize the use of school buildings for public or private dances not connected with school activities. School buildings may be used for meetings of public interest, however, a public dance is not considered a matter of public interest (1932 Op. Att'y Gen. 208 (#32-4-8)).

The voters at the regular election shall have power to instruct the board that school buildings may or may not be used for meetings of public interest (278.1(4)).

If at any time the voters of such district at a regular election forbid such use of any such schoolhouse or grounds, the board shall not thereafter permit such use until the said action of such voters shall have been rescinded by the voters at a regular election, or at a special election called for that purpose (297.11).

No one has the right to demand the free use of a gymnasium or auditorium or other school facility, but a board may authorize its use at any time that such use does not interfere with regular school activities (OAG #35-6-19(L)).

A leasehold interest in vehicles or other property is "public property" if the lease is acquired in the name of a public agency or is acquired with public funds. Private use of public property is permissible only if the private use is incidental to a public purpose. Heads of agencies should promulgate rules establishing guidelines for mixed public and private usage of public owned property. A contract may not authorize purely private use of public property, nor may public property be used for purely private purposes on a reimbursement basis (OAG #83-5-13).

The property of a school corporation when devoted to public use and not held for pecuniary profit shall not be taxed (427.1(2)).

Public buildings owned by the state, or any county, city, school district, or other municipal corporation, or any other public property which is necessary and proper for carrying out the general purpose for which such corporation is organized, are exempt from execution (627.18).

The board of directors shall notify the cities located within the school district, the counties in which the school district is located, and the department of general services annually of the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased (297.4).

Before proceeding to construct or purchase a facility as otherwise provided by law, a public agency shall inquire of other public agencies having facilities within the same general geographic area concerning the availability of all or part of those facilities for rent or sharing by agreement with the inquiring public agency. If there are no suitable facilities available for rent or sharing, the governing body of the public agency shall record its findings in its meeting minutes (28E.18).

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the state agency at least thirty days before the termination of the lease (7.20).

## **Religious Use**

If school districts permit community groups to use schoolhouse or grounds for meetings, religious groups are entitled to use school property on an equal basis. School boards may promulgate 'time, place and manner' regulations for use of school property (OAG #82-4-29).

School districts and area education agency boards, shall make public school services which shall include special education programs and services and may include health services, services for remedial education programs, guidance services, and school testing services, available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on neutral sites, or in mobile units located off the nonpublic school premises as determined by the boards of the school districts and area education agencies providing the services, and not on nonpublic school property, except health services, services funded by Title I of the federal Elementary and Secondary Education Act of 1965, diagnostic services for speech, hearing, and psychological purposes, and assistance with physical and communication needs of students with physical disabilities, and services of an educational interpreter, which may be provided on nonpublic school premises, with the permission of the lawful custodian (256.12(2)).

There is no statute that allows a school board to loan school property to a parochial school (OAG #29-10-19).  
[Exception - Textbooks, See Iowa Code section 301.1.]

A public school board may lease a vacant school building to a parochial school board for one year if adequate consideration is paid for the leasehold interest (OAG #65-6-14).

A local board may set aside a public school classroom for the exclusive use of shared-time classes (1972 Op. Att'y Gen. 453 (72-5-9)).

## **Maintenance of School Property**

The board shall make rules for the care of the schoolhouse, grounds, and property of the school corporation (279.8).

The control and management of a school building is placed exclusively with the board of directors of the school district and cannot be voted or delegated to any other agency (1938 Op. Att'y Gen. 234 (#37-5-17)).

Each board of directors in school districts where the school grounds adjoin cultivated or improved lands shall build and maintain a lawful fence between said grounds and cultivated or improved lands, and the owner of lands adjoining any such site shall have the right to connect the fence on the owner's land with the fence around the school grounds, but the owner shall not be liable to contribute to the maintenance of such fence (297.13).

No fence provided for in section 297.13 shall be constructed of barbed wire, nor shall any barbed wire fence be placed within ten feet of any school grounds. Any person violating the provisions of this section shall be guilty of a simple misdemeanor (297.14, 1912 Op. Att'y Gen. 738 (#12-7-12)).

If the owner of the ground adjacent to a school site has it fenced hog-tight, the schoolhouse fence must also be hog-tight. The board must maintain all of the fences between the school grounds and adjacent improved or cultivated land (1912 Op. Att'y Gen. 658 (#12-4-20)).

Electric companies have no right to trespass upon school property and they may be compelled to remove wires from crossing over a section of the school property. The enforcement would give the electric companies no right to cut off the service to the buildings (1928 Op. Att'y Gen. 136 (#37-3-31)).

A municipality cannot directly or indirectly prohibit a fire department from answering a fire call or making an inspection of school buildings within the corporate limits of the municipality (OAG #60-7-13).

Where an independent or community school district has within its limits a city of one hundred twenty-five thousand population or more, and has a schoolhouse located outside the city limits of such city and outside the limits of any city, the board of supervisors of the county in which such school district is located shall upon the filing of a petition signed by the owners of at least seventy-five percent of the property which will be assessed, order the construction or reconstruction of a permanent sidewalk not less than four feet in width along the highway adjacent to the property described and leading to such schoolhouse (320.1).

The board of directors of each public school district and the authorities in charge of each nonpublic school shall provide and maintain a suitable flagstaff on each school site under its control, and the United States flag and the Iowa state flag shall be raised on all school days when weather conditions are suitable (280.5).

It shall be the duty of any board of public officers charged with providing supplies for a public building to provide a suitable state flag, and it shall be the duty of the custodian of any public building to raise the flags of the United States of America and the state of Iowa, upon each secular day when weather conditions are favorable (1B.3).

School districts and AEAs shall identify and implement, through energy audits and engineering analyses, all energy conservation measures identified for which financing is made available by the department of natural resources to the entity. The energy conservation measure financings shall be supported through payment from energy savings. The department shall not require a school district or AEA to perform an engineering analysis if the school district or AEA demonstrates to the department that the facility which is the subject of the proposed engineering analysis at issue is unlikely to be in use or operation in six years by the governmental entity currently using or occupying the facility (473.13A).

Between July 1, 1986, and June 30, 1991, and on a staggered annual basis each five years thereafter, the board of directors of each school district shall file with the department of natural resources, on forms prescribed by the department of natural resources, the results of an energy audit of the buildings owned and leased by the school district. The department of natural resources may waive the requirement for the initial and subsequent energy audits for school districts that submit evidence that energy audits were conducted prior to January 1, 1987, and energy consumption of the district is at an adjusted statewide average or below. This section takes effect only if funds have been made available to a school district to pay the costs of the energy audit (279.44).

Officials and teachers of all schools are required to keep all doors and exits of their respective rooms and buildings unlocked when occupied during school hours or when such areas are being used by the public at other times (100.31).

Every school building with two or more classrooms shall have a warning system for fires of a type approved by the underwriters' laboratories and by the state fire marshal. The warning system shall be used only for fire drills or as a warning for emergency. Schools may modify the fire warning system for use as a tornado warning system or shall install a separate tornado warning system. Every school building shall also be equipped with portable fire extinguishers, with the type, size and number in accordance with national fire protection association standards and approved by the state fire marshal (100.31).

All private and public school officials and teachers are required to conduct not less than four fire drills and not less than four tornado drills in all school buildings during each school year when school is in session. Not less than two drills of each type shall be conducted between July 1 and December 31 of each year and not less than two drills of each type shall be conducted between January 1 and June 30 of each year (100.31).

The state fire marshal or the fire marshal's deputies shall cause each public or private school to be inspected at least once every two years to determine whether each school meets the fire safety standards of this Code and is free from other fire hazards (100.31).

If a building or structure has a floor space of five thousand square feet or less, an employer shall post signs on the outside of the building or structure identifying the type of each hazardous chemical contained in the building or structure. If the building has more than five thousand square feet, the employer shall post a sign at the place within the building where each hazardous chemical is permanently stored to identify the type of hazardous chemical. If the hazardous chemical or a portion of the hazardous chemical is moved within the building, the employer shall also move the sign or post an additional sign at the location where the hazardous chemical is moved. All letters and figures on signs required shall be at least three inches in height (89B.14).

After repairs are made, excess insurance proceeds become a part of the schoolhouse fund [PPEL] (OAG #24-2-26; 1928 Op. Att'y Gen. 77(#27-3-23)).

Work in excess of minor repair may be paid only from the schoolhouse [PPEL, capital projects] fund (OAG #57-7-18).

A school district cannot contribute (voluntarily as opposed to paying a special assessment) its funds for the aid of a city or town sewage extension (OAG #62-5-19).

School district boundaries are not automatically extended by the expansion of the city limits (OAG #27-5-19(L)).

Any damage, defacing, alteration, or destruction of tangible property is criminal mischief when done intentionally by one who has no right to so act (716.1).

#### **Establishment and Maintenance of Playgrounds Using the Public Education and Recreation Levy (PERL)**

Boards of directors of school districts may establish and maintain for children and adults public recreation places and playgrounds, and necessary accommodations for the recreation places and playgrounds, in the public school buildings and grounds of the district. The board may cooperate under chapter 28E with a public agency having the custody and management of public parks or public buildings and grounds, and with a private agency having custody and management of buildings or grounds open to the public, located within the school district, and may provide for the supervision and instruction necessary to carry on public educational and recreational activities in the parks, buildings, and grounds located within the district (300.1).

The board of directors of a school district may, and upon receipt of a petition signed by eligible electors equal in number to at least twenty-five percent of the number of voters at the last preceding school election, shall direct the county commissioner of elections to submit to the registered voters of the school district the question of whether to levy a tax of not to exceed thirteen and one-half cents per thousand dollars of assessed valuation for public educational and recreational activities authorized under chapter 300. If at the time of filing the petition, it is more than three months until the next regular school election, the board of directors shall submit the question at a special election within sixty days. Otherwise, the question shall be submitted at the next regular school election (300.2).

If a majority of the votes cast upon the proposition is in favor of the proposition, the board shall certify the amount required for a fiscal year to the county board of supervisors by April 15 of the preceding fiscal year. The board of supervisors shall levy the amount certified. The amount shall be placed in the PERL fund of the district and shall be used only for the purposes specified in chapter 300 (300.2).

Once approved at an election, the authority of the board to levy and collect the tax under section 300.2 shall continue until the board votes to rescind the levy and collection of the tax or the voters of the school district by majority vote order the discontinuance of the levy and collection of the tax. The tax shall be discontinued in the manner provided in this section or in the manner provided for imposition of the tax in section 300.2 (300.3).

The tax levied under sections 300.2 and 300.3 may also be used for community education purposes under chapter 276 (300.4).

- a. The board of directors of a local school district may establish a community education program for schools in the district and provide for the general supervision of the program. Financial support for the program shall be provided from funds raised pursuant to chapter 300 and from any private funds and any federal funds made available for the purpose of implementing chapter 296. The program which recognizes that the schools belong to the people and which shall be centered in the schools may include but shall not be limited to the use of the school facilities day and night, year round including weekends and regular school vacation periods for

- educational, recreational, cultural, and other community services and programs for all age, ethnic, and socioeconomic groups residing in the community.
- b. If a community education program is established, the board shall appoint a community education director who shall have professional training in the field of community education, recreation, or comparable experience.
  - c. Upon establishment of a community education program, the board shall provide for the selection of a district-wide advisory council which shall be responsible to the board and shall cooperate with and assist the board and the local community education director. The board shall also provide for the selection of local advisory councils.
  - d. The board shall receive an annual report and budget recommendation from the district-wide advisory council and may request supplementary reports as needed.
  - e. The school districts may cooperate with community colleges, institutions under the control of the state board of regents, and area education agencies in providing community education programs.
  - f. The board may use opportunities available under public law 93-380.
  - g. The board may approve cooperation and pooling of funds with other school districts (276.10).

Residents of the affected school district shall determine if community education will function in their community by providing for funding pursuant to Chapter 300 (276.11).

A school board and a city council have authority to enter into a lease from the school district to the city for land to be used as a playground or recreation center, and where reasonable, they may approve a lease, term of which is longer than the terms of office of the officers of the governmental bodies approving the lease (OAG #68-9-8).

A school district may lease land to a city for recreational purposes and cooperate in the operation thereof (OAG #72-4-19).

A school district may not assume the sole responsibility for maintenance of a playground constructed by a city for public use (OAG #65-5-3).

### **School Lunch Facilities**

School districts may purchase, erect, or otherwise acquire a building for use as a school meal facility, and equip a building for that use, and pay for the acquisition or equipping from funds available in the PPEL fund subject to the terms of section 298.2 (283A.9).

### **School Bus Maintenance Facilities**

Bonded indebtedness upon approval of voters for the cost of building a garage is permitted. General fund may not be expended for this purpose (OAG #64-5-5).

Construction costs of a new school bus maintenance building must come from the schoolhouse fund [PPEL, capital projects] (OAG #82-7-2(L)).

### **Acquisition of Buildings and Sites**

#### **Financing Sources**

Rejection of a bond issue proposal conducted to build a school building does not limit the use of the other funds available for schoolhouses. The legislature has provided several sources of schoolhouse funds and the existence of one method does not restrict, by implication, the use of other methods. After the voters have approved the tax levy for a period of years for particular purposes they do not have power to rescind the tax levy or narrow the scope of the purposes for which the funds may be used (OAG #85-2-1).

#### **Gifts and Bequests**

School corporations are authorized to take and hold property, real and personal, by gift and bequest and to administer the property through the proper officer in pursuance of the terms of the gift or bequest. Title shall not pass unless accepted by the governing board of the corporation. Conditions attached to the gifts or bequests become binding upon the corporation upon acceptance (565.6).

The board of directors of any school district which receives funds through gifts, devises and bequests shall deposit these funds in a trust or agency fund and use them in accordance with the terms of the gift, devise, or bequest (279.42).

Bequests to a school district must be turned over to the school treasurer and treated like all other school district moneys (OAG #27-6-7(L)).

A school district board may accept a gift of an auditorium to be built upon school property without submitting the issue to a vote of the district electorate (OAG #83-3-4).

### **Lease-Purchase and Other Contracts**

The board may, with approval of sixty percent of the voters, voting in a regular or special election in the school district, make extended time contracts not to exceed twenty years in duration for rental of buildings to supplement existing schoolhouse facilities; and where it is deemed advisable for buildings to be constructed or placed on real estate owned by the school district, such contracts may include lease-purchase option agreements, such amounts to be paid out of the PPEL fund. Before entering into a rental or lease-purchase option contract, authorized by the electors, the board shall first adopt plans and specifications for a building or buildings which it considers suitable for the intended use and also adopt a form of rental or lease-purchase option contract. The board shall then invite bids thereon, by advertisement published once each week for two consecutive weeks, in a newspaper published in the county in which the building or buildings are to be located, and the rental or lease-purchase option contract shall be awarded to the lowest responsible bidder, but the board may reject any and all bids and advertise for new bids (278.1).

School districts with approval of sixty percent of the voters may enter into lease-purchase agreements for pre-fabricated classroom units, but the cost thereof is to be paid out of the schoolhouse fund [PPEL] and cannot be paid from the general fund (OAG #65-7-14).

The board of directors of a local school district for which a voter-approved physical plant and equipment levy has been voted pursuant to section 298.2, may enter into a rental or lease arrangement, consistent with the purposes for which the voter-approved physical plant and equipment levy has been voted, for a period not exceeding ten years and not exceeding the period for which the voter-approved physical plant and equipment levy has been authorized by the voters (279.26). If the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes (298.2(4)).

Any other law to the contrary notwithstanding, the board of directors of a school district may acquire by purchase, lease, or other arrangement real estate located within or adjoining the boundaries of a municipal airport, and may take title, leasehold, or other interest, subject to a right of purchase or repurchase by the city owning or controlling the municipal airport. The city may purchase, repurchase, or repossess such real estate and the improvements constructed on the real estate upon terms and conditions as agreed to by the board of directors and the city council. The board of directors of any such school district may construct a technical school on the real estate to carry on vocational instruction in aviation mechanics and other aviation programs upon compliance with conditions and limitations otherwise provided by law (297.7(2)).

The board of directors of any school corporation in which there is no free public library may contract with any free public library for the free use of such library by the residents of the school district, and pay such library the amount agreed upon for the use of the library as provided by law. During the existence of the contract, the board shall certify annually a tax sufficient to pay the library the consideration agreed upon, not exceeding twenty cents per thousand dollars of assessed value of the taxable property of the district. During the existence of the contract, the school corporation is relieved from the requirement that the school treasurer withhold funds for library purposes. This section shall not apply in townships where a contract for other library facilities is in existence (298.7).

It is legally possible for one school district to lease a facility from another provided the agreement between them meets the requirements of chapter 28E dealing with joint exercise of governmental powers (OAG #69-5-1).

The board may, when necessary, rent a room and employ a teacher, where there are ten children for whose accommodation there is no schoolhouse (297.12).

A school board of a community school district may enter into a contract for the rental of a school building from a church or church corporation, provided that the building is not a place of worship and that under the terms of the lease the building would not be under ecclesiastical or sectarian control. Such school board could enter into a contract for the rental of a building to be used as school rooms with a non-profit corporation which non-profit corporation would in advance lease the said school building from a church. Such school board could enter into a contract for rental of a building to be used as school rooms with a non-profit corporation, where the non-profit corporation owned and held

title to the school building and the land underneath the building. The local school board could purchase land or a building from such a non-profit corporation (1970 Op. Att'y Gen. 110 (#69-4-9)).

A levy authorized by the board cannot be used on a contract of years as this tax may be terminated at any time by the electors (OAG #54-8-10).

#### **Purchase or Construction Using the Physical Plant and Equipment Levy (PPEL)**

The physical plant and equipment levy consists of the regular physical plant and equipment levy of not exceeding thirty-three cents per thousand dollars of assessed valuation in the district and a voter-approved physical plant and equipment levy of not exceeding one dollar and thirty-four cents per thousand dollars of assessed valuation in the district. However, the voter-approved physical plant and equipment levy may consist of a combination of a physical plant and equipment property tax levy and a physical plant and equipment income surtax as provided in subsection 4 with the maximum amount levied and imposed limited to an amount that could be raised by a one dollar and thirty-four cent property tax levy. The levy limitations of this subsection are subject to subsection 6 (298.2(1)).

The board may, and upon the written request of not less than one hundred eligible electors or thirty percent of the number of eligible electors voting at the last regular school election, whichever is greater, shall direct the county commissioner of elections to provide for submitting the proposition of levying the voter-approved physical plant and equipment levy for a period of time authorized by the voters in the notice of election, not to exceed ten years, in the notice of the regular school election. The proposition is adopted if a majority of those voting on the proposition at the election approves it. The voter-approved physical plant and equipment levy shall be funded either by a physical plant and equipment property tax or by a combination of a physical plant and equipment property tax and a physical plant and equipment income surtax, as determined by the board. However, if the board intends to enter into a rental or lease arrangement under section 279.26, or intends to enter into a loan agreement under section 297.36, only a property tax shall be levied for those purposes. Subject to the limitations of section 298.14, if the board uses a combination of a physical plant and equipment property tax and a physical plant and equipment surtax, for each fiscal year the board shall determine the percent of income surtax to be imposed expressly as full percentage points, not to exceed twenty percent (298.2(4)).

Authorized levies for the period of time approved are not affected as a result of a failure of a proposition proposal to expand the purposes for which the funds may be expended (298.2(5)).

If the board of directors of a school district in which the voters have authorized the schoolhouse tax prior to July 1, 1991, has entered into a rental or lease arrangement under section 279.26, Code 1989, or has entered into a loan agreement under section 297.36, Code 1989, the levy shall continue for the period authorized and the maximum levy that can be authorized under the voter-approved physical plant and equipment levy is reduced by the rate of the schoolhouse tax (298.2(6)).

In order to make immediately available proceeds of the voter-approved physical plant and equipment levy which has been approved by the voters as provided in section 298.2, the board of directors may, with or without notice, borrow money and enter into loan agreements in anticipation of the collection of the tax with a bank, investment banker, trust company, insurance company, or insurance group. By resolution, the board shall provide for an annual levy which is within the limits of the voter-approved PPEL levy to pay for the amount of the principal and interest due each year until maturity. The board shall file a certified copy of the resolution with the auditor of each county in which the district is located. The filing of the resolution with the auditor makes it the duty of the auditor to annually levy the amount certified for collection until funds are realized to repay the loan and interest on the loan in full. The loan must mature within the period of time authorized by the voters and shall bear interest at a rate which does not exceed the limits under chapter 74A. A loan agreement entered into pursuant to this section shall be in a form as the board of directors shall by resolution provide and the loan shall be payable as to both principal and interest from the proceeds of the annual levy of the voter-approved physical plant and equipment levy or so much thereof as will be sufficient to pay the loan and interest on the loan. The proceeds of a loan must be deposited in the PPEL fund. Warrants paid from this fund must be for purposes authorized for the voter-approved physical plant and equipment levy (297.36).

The fact that a school corporation may have previously borrowed money and entered into loan agreements under authority of this section does not prevent the school corporation from borrowing additional money and entering into further loan agreements if the aggregate of the amount payable under all of the loan agreements does not exceed the proceeds of the voter-approved physical plant and equipment levy (297.36).

A loan agreement between a school district and a bank, investment banker, trust company, insurance company, or insurance group that was made under section 297.36, Code 1989, prior to July 1, 1991, in order to make immediately

available proceeds of the schoolhouse tax approved by the voters prior to July 1, 1991, and the levy of taxes to pay principal and interest thereafter, shall continue in effect for the duration of the loan agreement (297.35).

The revenues from the regular and voter-approved physical plant and equipment levies shall be placed in the PPEL fund and expended only for the following purposes:

1. The purchase and improvement of grounds. For the purposes of this subsection:
  - a. "Purchase of grounds" includes the legal costs relating to the property acquisition, costs of surveys of the property, costs of relocation assistance under state and federal law, and other costs incidental to the property acquisition.
  - b. "Improvement of grounds" includes grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.
2. The construction of schoolhouses or buildings and opening roads to schoolhouses or buildings.
3. The purchase of buildings and the purchase of a single unit of equipment or a technology system exceeding one thousand five hundred (\$1,500) dollars in value.
4. The payment of debts contracted for the erection or construction of schoolhouses or buildings, not including interest on bonds.
5. Procuring or acquisition of library facilities.
6. Repairing, remodeling, reconstructing, improving, or expanding the schoolhouses or buildings and additions to existing schoolhouses. For the purpose of this subsection, "repairing" means restoring an existing structure or thing to its original condition, as near as may be, after decay, waste, injury, or partial destruction, but does not include maintenance; and "reconstructing" means rebuilding or restoring as an entity a thing which was lost or destroyed.
7. Expenditures for energy conservation.
8. The rental of facilities under chapter 28E.
9. Purchase of transportation equipment for transporting students.
10. Lease-purchase option agreements for school buildings and for equipment exceeding in value five thousand dollars (\$5,000) per single unit.
11. Equipment purchases for recreational purposes.
12. Payments to a municipality or other entity as required under subsection 403.19(2).

Interest earned on money in the PPEL fund may be expended for purposes listed in this section (298.3).

Revenues from the regular and voter-approved PPEL levies shall not be expended for school district employee salaries or travel expenses, supplies, printing costs or media services, or for any other purpose not expressly authorized in this section (298.3).

#### **Asbestos Project Grant Awards**

The board of directors may pay the actual cost of an asbestos project from any funds in the general fund of the district, funds received from the physical plant and equipment levy, or moneys obtained through a federal asbestos loan program, to be repaid from any of the funds specified in this subsection over a three-year period. For the purpose of this section, "cost of an asbestos project" includes the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans and recordkeeping requirements relating to the presence of asbestos in school buildings of the district and its removal or encapsulation (279.52).

A vote of the people is not required to remove or encapsulate asbestos when a federal grant or loan is obtained for the project (AG Informal advice, August 7 1985).

A state agency or political subdivision shall not accept a bid in connection with any asbestos project from a business entity which does not hold a permit from the division of labor services of the department of workforce development at the time the bid is submitted (88B.11).

#### **Vision Iowa School Infrastructure Grant Awards**

For fiscal years beginning July 1, 2000, July 1, 2001, and July 1, 2002, a school district may submit an application for a school infrastructure project. School infrastructure means activities initiated on or after July 1, 2000, as authorized in section 296.1 but does not include those activities related to stadiums, bus barns, a home or homes of a teacher or



superintendent, procuring and improving a site for an athletic field, or improving a site already owned for an athletic field (292.1(9)).

A local match is required. The local match percentage means a percentage equivalent to either of the following, whichever is less:

- a. fifty percent.
- b. the quotient of a school district's capacity per pupil divided by the capacity per pupil of the school district at the fortieth percentile, multiplied by fifty percent, except that the percentage shall not be less than twenty percent (292.1(5)).

Capacity per pupil means the sum of a school district's property tax infrastructure capacity per pupil and the sales tax capacity per pupil (292.1(1)). Property tax infrastructure capacity per pupil means the sum of a school district's levies under sections 298.2 and 298.18 when the levies are imposed to the maximum extent allowable under law in the budget year divided by the school district's basic enrollment for the budget year (292.1(7)). Sales tax capacity per pupil means the estimated amount of revenues that a school district receives or would receive if a local sales and services tax for school infrastructure is imposed at one percent pursuant to section 422E.2, divided by the school district's basic enrollment for the budget year (292.1(8)).

A school district shall receive the lesser of one million dollars of financial assistance under the program, or the total capital investment of the project minus the local match requirement (292.2(5)).

Chapter 292 specifies the criteria to be included in the application in subsection 292.2(3). Chapter 292 also specifies that greater priority be given to the following:

- a. A school district with a lower capacity per pupil
- b. A school district whose plans address specific occupant safety issues.
- c. A school district reorganizing or collaborating.
- d. A school district for which a sales and services tax for school infrastructure has not been imposed pursuant to section 422E.2 or a school district receiving minimal revenues under section 422E.3 when the total enrollment of the school district is considered (292.2(7)).

A school district shall not receive more than one grant under the program (292.2(4)). A school district that receives financial assistance under the vision Iowa program created under section 15F.302 pursuant to a joint application shall not be eligible to receive financial assistance under this program (292.2(9)). A school district located in whole or in part in a county which has imposed the local option sales and services tax for school infrastructure at the maximum rate and has revenues from that tax of more than the statewide average of sales tax capacity per pupil shall not be eligible for financial assistance under the program (292.2(10)).

### **Iowa Demonstration Federal School Infrastructure Grant Awards**

If federal rules or regulations are adopted relating to the distribution or utilization of funds allocated to the state department of education pursuant to section 422E.5 which are inconsistent with the provision of this section, the state department shall comply with the requirements of the federal rules or regulations (422E.5(6)). The federal appropriation to the state of Iowa for school demonstration grants contains two parts: fire safety and new construction. The funds shall be allocated to the school budget review committee (422E.5(2)). The school budget review committee shall allocate the fire safety program funds to school districts which, in its discretion, are determined to be faced with the most severe deficiencies. School districts eligible for fire safety program grants shall have received an order or citation from the state fire marshal, or a fire department chief or fire prevention officer, for one or more fire safety violations regarding a school facility, or in the opinion of the state fire marshal shall be regarded as operating facilities subject to significant fire safety deficiencies. School districts applying for program grants shall have developed and submitted to the state fire marshal or local building department a written plan to remedy fire or safety defects within a specified time frame. Approval of the written plan by the state fire marshal or local building department shall be obtained prior to receipt of a grant award by a school district (422E.5(3)).

### **Qualified Zone Academy Bonds (QZAB) Program**

The Federal Taxpayer Relief Act of 1997 created the Qualified Zone Academy Bond (QZAB) program to provide low or no interest financing for renovating existing school buildings and purchasing equipment. New construction of buildings or additions to buildings does not qualify under this program. QZABs are financial instruments that provide low or no interest bonds which are subsidized by the federal government in the form of tax credits to the bondholder.

An eligible Qualified Zone Academy includes any public school or academic program within a public school that is established and operated under the supervision of a school district to provide education or training below the postsecondary level if:

1. Such public school or program is designed in cooperation with business to enhance the academic curriculum, increase graduation and employment rates, and better prepare students for the rigors of college and the increasingly complex workforce.
2. Students in such public school or program will be subject to the same academic standards and assessments as other students educated by the eligible local education agency.
3. Such public school is located in an Empowerment Zone, or Enterprise Community or there is a reasonable expectation that at least 35 percent (35%) of the students attending such school or participating in a program will be eligible for free or reduced priced lunches under the school meal program established under the national school lunch Act.
4. Such school or program has established a partnership with a business.

Des Moines Independent School District is the only Iowa district that has schools located within an Enterprise Community.

In addition to the above requirements:

- A district must determine whether the purposes for which QZAB is issued conforms to state laws regarding indebtedness.
- A district must obtain written agreements between a Qualified Zone Academy and one or more local businesses, which pledge contributions having a present value of at least 10 percent (10%) of the gross proceeds of the QZAB.
- A district must work with a financial institution to issue the QZABs. The district will be responsible for repayment of the principal, and interest if any, upon maturity.

Allocations will be made up to a maximum of \$1,000,000. Only one project per district is eligible. QZAB authority allocations are made upon receipt of a qualified application on a first come-first served basis.

The district may use the voter-approved physical plant and equipment levy to repay the QZAB indebtedness.

### **School Renovation, IDEA, and Technology Grants Program**

The U. S. Department of Education Appropriations Act 2001, Section 321, Public Law 106-554 authorized the Grants for School Repair and Renovation (CFDA 84.352) program to assist school districts with urgent school repair and renovation, activities authorized under Part B of the Individuals with Disabilities Education Act (IDEA), and technology activities related to school renovation. New construction of buildings or additions to buildings do not qualify. This grant program is split into two components, with school repair and renovation being one component and IDEA and technology being the other component. Both components will be awarded through a competitive grant process.

School renovation project grants will be awarded to Iowa public school districts. The grant may be used for emergency school repair or renovation projects that are defined to be those necessary to ensure the health and safety of students and staff. Examples of the types of projects that may be funded with this grant include, but are not limited to: (a) repairing, replacing, or installing roofs; electrical wiring; plumbing systems and/or sewage systems; or heating, ventilation, or air-conditioning systems; (b) bringing schools into compliance with fire and safety codes; (c) making school facilities accessible in order to comply with the Americans with Disabilities Act of 1990 or Section 504 of the Rehabilitation Act of 1973; (d) asbestos abatement or removal from public school facilities; (e) eliminating lead-based paint; (f) replacing drinking water fixtures / plumbing which utilize lead solder; (g) repairing structural defects that threaten the health and safety of students and staff; and (h) replacing doors, windows, and/or associated hardware which may pose a safety hazard. Non-profit private schools with a student poverty rate of 40 percent or greater will be able to participate in the program on an equitable basis to modify school facilities to meet standards under the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973 and to abate or remove asbestos. Private schools apply through their local public school district. The maximum grant award is the lesser of \$200,000 or the total project cost minus the required local match. The local match, which will range from 20 to 50 percent, depending on capacity (see Vision Iowa School Infrastructure Grants above), will come from the issuance of bonds, the local option sales and services tax for school infrastructure, a physical plant and equipment levy, or other moneys locally obtained by the district for school infrastructure, excluding other state or federal moneys.

The IDEA and technology grants will be awarded to Iowa public school districts. These grants are for technology activities related to school repair and renovation, such as wiring; acquiring hardware and software; connectivity linkages and resources; and microwave, fiber optics, cable, and satellite transmission equipment. Activities authorized under Part B of the IDEA may also qualify and must be spent in accordance with that statute and its regulations, which means that the funds must be used for the excess costs of providing special education and related services to children

with disabilities. Students must be identified as a student requiring special education services and has an Individual Educational Plan (IEP) in place. The projects include identified assistive technology devices as prescribed by the student's IEP. Projects may also include, but are not limited to elevators, ramps, lifts, and stair climbers. Maximum awards of \$50,000 will be available to districts and no local match is required. Greater priority is given to a district that has a lower capacity per pupil or that has no or minimal local option sales and services tax for school infrastructure revenues per pupil.

#### **School Budget Review Committee Approval of Modified Allowable Growth or Use of Unexpended Fund Balance**

The SBRC shall establish a modified allowable growth for a district by increasing its allowable growth when the district submits evidence that it requires additional funding for removal, management, or abatement of environmental hazards due to a state or federal requirement. Environmental hazards shall include but are not limited to the presence of asbestos, radon, or the presence of any other hazardous material dangerous to health and safety. The district shall include a budget for the actual cost of the project that may include the costs of inspection, reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, developing of management plans, recordkeeping requirements, and encapsulation or removal of the hazardous materials (257.31(6)).

The SBRC may authorize a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

- a. Furnishing, equipping, and contributing to the construction of a new building or structure for which the voters of the district have approved a bond issue as provided by law or the tax levy provided in section 298.2 [PPEL].
- b. The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization (257.31(7)).

#### **Local Option Sales and Services Tax for School Infrastructure and Revenue Bonds**

A local sales and services tax for school infrastructure purposes may be imposed by a county on behalf of school districts. The maximum rate of tax shall be one percent. Local sales and services tax moneys received by a county for school infrastructure purposes pursuant to chapter 422E shall be utilized solely for school infrastructure needs. School infrastructure means those activities for which a school district is authorized to contract indebtedness and issue general obligation bonds under section 296.1, except those activities related to a teacher's or superintendent's home or homes. These activities include the construction, reconstruction, repair, purchasing, or remodeling of schoolhouses, stadiums, gyms, field houses, and bus garages and the procurement of schoolhouse construction sites and the make of site improvements. Additionally, school infrastructure includes the payment or retirement of outstanding bonds previously issued for school infrastructure purposes, and the payment or retirement of bonds issued under section 422E.4 (422E.1).

The board of directors of a school district shall be authorized to issue negotiable, interest-bearing school bonds, without election, and utilize tax receipts derived from the sales and services tax for school infrastructure purposes for principal and interests repayment. Proceeds of the bonds issued pursuant to this section shall be utilized solely for school infrastructure needs. Issuance of bonds pursuant to this section shall be permitted only in a district which has imposed a local sales and services tax for school infrastructure purposes pursuant to section 422E.2. The maximum period during which principal on the bonds is payable shall not exceed a ten-year period, or the date of repeal stated on the ballot proposition (422E.4).

The Board of Supervisors, can, and in some instances must, paraphrase and supplement the language of the petition prior to having the issue placed on the ballot in a local option tax election (OAG #00-4-2(L)).

Section 422E.1(3) does not prohibit per se a school district from expending school infrastructure local option sales and services tax proceeds for salaries and benefits of school district employees who are engaged in school infrastructure activities authorized under chapter 422E (OAG #00-4-4(L)).

Equal protection guarantees do not prohibit a local option sales and services tax ballot from setting forth two propositions for separate school districts that would give property tax relief only to those taxpayers residing within one of the school districts. A ballot

proposition may also include language premised upon the passage of future legislation (OAG #00-2-1).

#### **Bonded Indebtedness, General Obligation Bonds**

The board of directors of any school corporation when authorized by the voters at the regular election or at a special election called for that purpose, may issue the negotiable, interest-bearing school bonds of said corporation for borrowing money for any or all of the following purposes:

1. To acquire sites for school purposes.
2. To erect, complete, or improve buildings authorized for school purposes.
3. To acquire equipment for schools, sites, and buildings (298.21).

Subject to the approval of the voters thereof, school districts are hereby authorized to contract indebtedness and to issue general obligation bonds to provide funds to defray the cost of purchasing, building, furnishing, reconstructing, repairing, improving or remodeling a schoolhouse or schoolhouses and additions thereto, gymnasium, stadium, field house, school bus garage, teachers' or superintendent's home or homes, and procuring a site or sites therefor, or purchasing land to add to a site already owned, or procuring and improving a site for an athletic field, or improving a site already owned for an athletic field, and for any one or more of such purposes. Taxes for the payment of said bonds shall be levied in accordance with chapter 76, and said bonds shall mature within a period not exceeding twenty years from date of issue, shall bear interest at a rate or rates not exceeding that permitted by chapter 74A and shall be of such form as the board of directors of such school district shall by resolution provide, but the aggregate indebtedness of any school district shall not exceed five percent of the actual value of the taxable property within said school district, as ascertained by the last preceding state and county tax lists (296.1).

A school board may alter the educational purpose served by a school building constructed with proceeds from bonds issued for a particular purpose in order to meet the current needs of the school district. A court would not likely reverse the exercise of a school board's discretion in the absence of some showing of fraud, arbitrary action or abuse of discretion (OAG #92-8-6).

#### **Boundary Changes**

In any case where, by reason of natural obstacles, any portion of the inhabitants of any school corporation in the opinion of the AEA administrator cannot with reasonable facility attend school in their own corporation, the AEA administrator shall, by a written order, in duplicate, attach the part thus affected to an adjoining school corporation, the board of the same consenting thereto, one copy of which order shall be at once transmitted to the secretary of each corporation affected thereby, who shall record the same and make the proper designation on the plat of the corporation. Township or county lines shall not be a bar to the operation of this section (274.13).

When the natural obstacles by reason of which territory has been set off by the AEA administrator from one school district and attached to another in the same or an adjoining county have been removed, such territory may, upon the concurrence of the respective boards, be restored to the school district from which set off and shall be so restored by said boards upon the written application of two-thirds of the electors residing upon the territory so set off together with the concurrence of the AEA administrator and the board of the school district from which such territory was originally set off by the said administrator (274.14).

The boundary lines of contiguous school corporations may be changed by the concurrent action of the respective boards of directors at their regular meetings in July, or at special meetings called for that purpose. Such concurrent action shall be subject to the approval of the AEA board but such concurrent action shall stand approved if the said board does not disapprove such concurrent action within thirty days following receipt of notice thereof. The corporation from which territory is detached shall, after the change, contain not less than four government sections of land (274.37).

#### **Size and Location of Sites**

The board of each school district may fix the site for each schoolhouse, which shall be upon some public highway already established or procured by such board and not in any public park, and except in cities and villages, not less than thirty rods from the residence of any landowner who objects thereto. [A rod is a linear measure of 5 ½ yards or 16 ½ feet. Thirty rods would be equal to 165 yards or 495 feet.] In fixing such site, the board shall take into consideration the number of scholars residing in the various portions of the school district and the geographical location and convenience of any proposed site (297.1).

Except as hereinafter provided, any school district may take and hold so much real estate as may be required for such site, for the location or construction thereon of schoolhouses, and the convenient use thereof, but not to exceed ten acres exclusive of public highway (297.2).

Any school district may take and hold an area equal to two blocks exclusive of the street or highway, for a schoolhouse site, and not exceeding thirty acres for school playground, stadium, or field house, or other purposes for each such site (297.3). [A city block 300 feet by 300 feet contains 2.01 acres of ground. This would allow approximately thirty-four acres for a site for any district including a city or village.]

A school district including a city, town, or village may purchase more land for sites providing each site is for a different school. It makes no difference if the sites adjoin. For example, if a district, under section 297.3, desired to build an elementary school on a site, a junior high school, and a senior high school, it may buy two blocks plus thirty acres for each site in three different locations quite remote from each other or the district might buy the three sites adjoining each other (OAG #55-6-16(L)).

A school board may purchase land in more than one location. Sites for a building and for play purposes need not be contiguous (1928 Op. Att'y Gen. 187 (#27-7-12)).

It shall be on a public highway already established or procured by the board. (A street is considered a public highway.) A school district cannot legally acquire a site by purchase or condemnation if it is not on some public highway (1906 Op. Att'y Gen. 58 (#4-5-2)).

It shall not be less than thirty rods from the residence of any landowner who objects to its location, except in cities, towns, and villages. (No one except the landowner may raise an objection.) (1899 Op. Att'y Gen. 218 (#99-11-23)).

A cemetery which is no longer used as burying ground cannot be acquired as a school site by any statutory proceedings, there being no provision authorizing the removal of a grave for any purpose in Iowa, but the only manner in which such cemetery can be removed is by obtaining consent of next of kin of those buried in such cemetery (1920 Op. Att'y Gen. 529 (#19-9-10)).

School sites may be purchased from a school board member. This is an unusual procedure and such a transaction should be so "above-board" that no accusation of collusion as to sale and price could be justified (1929 Op. Att'y Gen. 104).

A site location may be included as part of a ballot question placed before the voters of a school district. In the event that multiple competing proposals are placed on the ballot at the same election and more than one proposal receives the number of votes necessary for approval, the school board is authorized to choose the proposal receiving the highest number of votes as the sole proposal to be accomplished (OAG #93-2-3(L)).

Where the location of a schoolhouse has been placed on the ballot and the people have voted it, the board cannot revoke that power unless for some controlling reason (OAG #45-6-8).

A school district is immune from the restrictions of zoning ordinances (Bloomfield v. Davis County Community School District, 254 Iowa 900, 119 N.W. 2d, 909).

The general fund is not to be used for schoolhouses or sites (OAG #23-11-28).

Expenditures for a playground site are capital improvements which are required to be made out of the schoolhouse fund [PPEL, capital projects] rather than out of the general fund (1938 Op. Att'y Gen. 210 (#37-5-7)).

Payments for sites must be made from the schoolhouse fund [PPEL, capital projects], not from the general fund (1934 Op. Att'y Gen. 223 (#33-5-18)).

A district cannot use the general fund for building schoolhouses, purchasing sites or equipment [real property] for new schoolhouses (OAG #56-11-20).

### **Condemnation and Adverse Possession**

Whenever the power to condemn private property for public use is granted to any officer, board, or municipality, such grant shall, unless otherwise declared, be construed as granting authority to the officer, board, or official body having jurisdiction over the matter, to acquire, at its fair market value, and from the parties having legal authority to convey, such right as would be acquired by condemnation (6A.5).

If the owner of real estate desired for any purpose for which any school may be authorized to take and hold real estate refuses to convey the same, or is dead or unknown or cannot be found, or if in the judgment of the board of directors of the corporation they cannot agree with such owner as to the price to be paid therefor, such real estate may be taken under condemnation proceedings in accordance with the provisions of chapter 6B (297.6). Such proceedings shall be conducted by the county attorney (6B.2(2)).

An acquiring agency shall provide written notice of a public hearing to each owner and any contract purchaser of record of agricultural land that may be the subject of condemnation. The authority under chapter 6B is not conferred and condemnation proceedings shall not begin unless a good faith effort is made to mail and publish the notice as provided in section 6B.2A on the owner and any contract purchaser of record of the property subject to condemnation (6B.2A(1)).

The acquiring agency shall make a good faith effort to negotiate with the owner to purchase the private property or property interest before filing an application for condemnation or otherwise proceeding with the condemnation process (6B.2B).

The authority to condemn is not conferred, and the condemnation proceedings shall not commence, unless the governing body for the acquiring agency approves the use of condemnation and there is a reasonable expectation the applicant will be able to achieve its public purpose, comply with all applicable standards, and obtain the necessary permits (6B.2C).

A school district cannot condemn public property for school use or vice versa. State doctrine is that property dedicated to one public use may be taken over for another public use if there is mutual improvement, otherwise it cannot (OAG #27-11-17).

When a school district exclusively occupies a tract of land without holding the deed and improves, maintains, and uses buildings for school purposes, such possession is called adverse possession and is under a claim of absolute ownership which will ripen into a title by prescription in ten years (OAG #55-8-11).

### **Construction**

It is the duty of the state board to prescribe guidelines for facility standards (256.7(11)).

School districts are quasi-municipal corporations of the most limited power known to the law and are subject to city ordinances pertaining to building permits and fees (1950 Op. Att'y Gen. 201 (#50-12-21)).

A school district is subject to the provisions of a city ordinance pertaining to the issuing of building permits in connection with the construction of school buildings and is required to pay the fees prescribed by the foregoing ordinance (Cedar Rapids Community School District v. City of Cedar Rapids. 252 Iowa 205, 106 N.W. 2d, 655).

When a school district utilizes the services of a construction manager for building, compliance with the statutory requirements of public hearing on the project and form of contract, approval of plans and bonding is also required (OAG #74-7-19).

Under the statute making it the duty of the board to select the site, adopt the plans for the schoolhouse, and award the contract for the building thereof, the board cannot delegate such powers to a committee appointed by it (Kinney v. Howard, 1907, 133 Iowa 94, 110 N.W. 282).

### **Accessibility for Persons with Disabilities**

#### **Buildings**

It is the intent of Iowa Code chapter 104A that standards and specifications are followed in the construction of public and private buildings and facilities which are intended for use by the general public to ensure that these buildings and facilities are accessible to and functional for persons with disabilities (104A.1). The standards and specifications adopted by the state building code commissioner and set forth in chapter 104A shall apply to all public and private buildings and facilities, temporary and permanent, used by the general public (104A.2).

#### **Parking**

1. Persons with disabilities parking spaces and access loading zones for persons with disabilities that serve a particular building shall be located on the shortest accessible route to the nearest accessible entrance to the building.
2. A person with disabilities parking space designated after July 1, 1990, shall comply with the dimension requirements in rules and in effect when the spaces are designated. Adopted rules shall be accepted national standards for dimensions of persons with disabilities spaces, consistent with the requirements of federal law. However, these dimension requirements do not apply to parallel on-street parking spaces.
3.
  - a. The state or a political subdivision of the state which provides off-street public parking facilities or an entity providing nonresidential parking on off-street public parking facilities shall provide not less than two percent of the total parking spaces in each parking facility as persons with disabilities parking spaces, rounded to the nearest whole number of persons with disabilities parking spaces. However, such parking facilities having ten or more parking spaces shall set aside at least one persons with disabilities parking space.
  - b. An entity providing off-street nonresidential public parking facilities shall review the utilization of existing persons with disabilities parking spaces for a one-month period not less than once every twelve months. If upon review, the average occupancy rate for persons with disabilities parking spaces in a facility exceeds sixty percent during normal business hours, the entity shall provide additional persons with disabilities parking spaces as needed.
  - c. An entity providing off-street nonresidential parking as a lessor shall provide a persons with disabilities parking space to an individual requesting to lease a parking space, if that individual possesses a persons with disabilities parking permit.
  - d. A new nonresidential facility in which construction has been completed on or after July 1, 1991, providing parking to the general public shall provide persons with disabilities parking spaces as stipulated below:

Total Parking Spaces in Lot	Required Minimum Number of Persons with Disabilities Parking Spaces
10 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1000	2 percent of total
1001 and over	20 spaces plus 1 for each 100 over 1000

- e. Any other person may also set aside persons with disabilities parking spaces on the person's property provided each persons with disabilities parking space is clearly and prominently designated as a person with disabilities parking space.
5. A persons with disabilities parking space located on a paved surface may be painted with a blue background upon which the international symbol of accessibility is painted in white or yellow paint. However, the blue background paint may be omitted. As used in this subsection, "paved surface" includes surfaces which are asphalt surfaced.
6. A persons with disabilities parking review committee may be established by the state and each political subdivision of the state which is required to provide persons with disabilities parking spaces in off-street public parking facilities according to subsection 3. The persons with disabilities parking review committee shall consist of five members who are persons with disabilities as defined in section 321L.1 and five members who are officials of the state or political subdivision. The persons with disabilities parking review committee shall have the discretion to increase or decrease the numbers of persons with disabilities parking spaces required by this section. A decision to change the numbers or location of persons with disabilities parking spaces shall be based upon the needs of the community, the percentage of use of the present persons with disabilities parking spaces, and the past experience of the state or political subdivision regarding persons with disabilities parking. An individual may request the persons with disabilities parking committee to review the amounts and locations of persons with disabilities parking spaces. The persons with disabilities parking review committee shall investigate each individual's request and shall act upon such request if the investigation substantiates the individual's complaint (321L.5).

A persons with disabilities parking sign shall be displayed designating the persons with disabilities parking space.

1. The persons with disabilities parking sign shall have a blue background and bear the international symbol of accessibility in white. If an entity who owns or leases real property in a city is required to provide persons with disabilities parking spaces, the city shall provide, upon request, the signs for the entity at cost. If an entity who owns or leases real property outside the corporate limits of a city is required to provide persons with disabilities parking spaces, the county in which the property is located shall provide the signs for the entity at cost upon request.
2. The persons with disabilities parking sign shall be affixed vertically on another object so that it is readily visible to a driver of a motor vehicle approaching the persons with disabilities parking space. A persons with disabilities parking space designated only by the international symbol of accessibility being painted or otherwise placed horizontally on the parking space does not meet the requirements of this subsection (321L.6).

Failure to provide proper persons with disabilities parking spaces as provided in section 321L.5 or to properly display persons with disabilities parking signs as provided in section 321L.6 is a simple misdemeanor punishable as a scheduled violation under section 805.8A(1)(c) (321L.7).

### **State Building Codes**

The authority responsible for the construction of any building or facility covered by section 104A.2 shall conform with rules adopted by the state building code commissioner as provided in Iowa Code section 103A.7 (104A.6).

Nothing in chapter 103A shall be construed as prohibiting any governmental subdivision from adopting or enacting any building regulations relating to any building or structure within its limits, but a governmental subdivision in which the state building code has been accepted and is applicable shall not have the power to supersede, void, or repeal or make more restrictive any of the provisions of chapter 103A or of the rules adopted by the commissioner (103A.22(1)).

Notwithstanding the provisions of subsection 103A.22(1):

- a. Provisions of the state building code establishing thermal efficiency energy conservation standards shall be applicable to all new construction owned by a political subdivision of the state, to all new construction located in a governmental subdivision which has adopted either the state building code or a local building code or compilation of requirements for building construction and to all other new construction in the state which will contain more than one hundred thousand cubic feet of enclosed space that is heated or cooled.
- b. Provisions of the state building code establishing lighting efficiency standards shall be applicable to all new construction owned by a political subdivision of the state and to all new construction, in the state, of buildings which are open to the general public during normal business hours (103A.10(4)).

Places of assembly for public use including but not limited to theaters, auditoriums, and convention halls, constructed on or after January 1, 1991, shall conform to the standards for minimum plumbing facilities as provided in the uniform plumbing code. All toilets installed pursuant to section 104B.1 shall be water efficient toilets which use three gallons or less of water per flush (104B.1).

### **Energy Conservation and Life Cycle Analysis**

Life cycle cost analysis means an analytical technique that considers certain costs of owning, using and operating a facility over its economic life including but not limited to the following:

- a. Initial costs.
- b. System repair and replacement costs.
- c. Maintenance costs.
- d. Operating costs, including energy costs.
- e. Salvage value (470.1(8)).

A contract for a public improvement or construction of a public building, including new construction or renovation of an existing public building shall not be let without satisfying the following requirements:

- a. A design professional submitting a design development proposal for consideration of the public body shall at minimum prepare one proposal meeting the design program's space and use requirements which reflects the lowest life cycle cost possible in light of existing commercially available technology.
- b. Submission of a cost benefit analysis of any deviations from the lowest life cycle cost proposal contained in other design proposals requested by or prepared for submission to the public body (72.5(1)).

The public body may request additional design proposals in light of funds available for construction, aesthetic considerations, or any other reason (72.5(1)).



In connection with development of a statewide building energy efficiency rating system, pursuant to section 473.40, the director of the department of natural resources in consultation with the department of management, state building code director, and state fire marshal, shall develop standards and methods to evaluate design development documents and construction documents based upon the energy efficiency rating system for public buildings, and other life cycle cost factors, to facilitate fair and uniform comparisons between design proposals and informed decision making by public bodies (72.5(2)).

It is the intent of the general assembly to discourage construction of public buildings based upon lowest acquisition cost, and instead to require that such decisions be based upon life cycle costs to reduce energy consumption, maintenance requirements, and continuing burdens upon taxpayers (72.5(4)).

The general assembly declares that energy management is of primary importance in the design of publicly owned facilities. Commencing January 1, 1980, a public agency responsible for the construction or renovation of a facility shall, in a design begun after that date, include as a design criterion the requirement that a life cycle cost analysis be conducted for the facility. The objectives of the life cycle cost analysis are to optimize energy efficiency at an acceptable life cycle cost. The life cycle cost analysis shall meet the requirements of section 470.3 (470.2).

A life cycle cost analysis shall include but is not limited to the following elements:

- a. Specification of energy management objectives and health, safety and functional constraints. The facility design shall comply with applicable state or local building code requirements.
- b. Identification of energy needs of the facility and energy system alternatives to meet those needs.
- c. Cost of the energy system alternatives identified in paragraph "b" of this subsection.
- d. Determination of amounts and timing of cash flow.
- e. Calculation of life cycle cost using an economic model such as, but not limited to, rate of return, annual equivalent cost or present equivalent cost.
- f. Evaluation of design and system alternatives using a method such as, but limited to, design matrixes, ranking tables or network analysis (470.3(1)).

A public agency or a person preparing a life cycle cost analysis for a public agency shall consider the methods and analytical models provided by the department and available through the commissioner, which are suited to the purpose for which the project is intended (470.3(2)).

The life cycle cost analysis shall be approved by the public agency before contracts for the construction or renovation are let. A public agency may accept a facility design and shall meet the requirements of chapter 470 if the design meets the operational requirements of the agency and provides the optimum life cycle cost. The public agency shall retain a copy of the life cycle cost analysis and a statement justifying a design decision both of which shall be available for public inspection at reasonable hours (470.4).

The public agency responsible for the new construction or renovation of a public facility shall implement the recommendations of the life cycle cost analysis (470.8).

Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with chapter 470 and the actual construction or renovation meets the requirements of the design (470.6).

Various statutes require counties, cities, and school corporations participating in the energy bank program to administer and use competitive-bidding procedures for capital improvements, which would include the implementation of energy conservation measures when the estimated cost exceed statutory limitations; in any event, public policy suggests all public entities administer and use competitive-bidding procedures in such circumstances. Public entities may consult with the private sector, such as an energy savings company, in preparing their proposals for energy conservation measures (OAG #94-9-3(L)).

### **Public Improvements**

Sections 73A.2 [public hearing] and 73A.18 [bids] are applicable to the construction or repair of school buildings. Before construction of a school building for which the cost of construction exceeds twenty-five thousand dollars, the board of directors of a school district shall send a copy of the plans to the building consultant in the department of education for review. The board of directors may submit for review a copy of the plans for repair or renovation of a school building. The building consultant shall return the plans together with any recommendations to the board of directors within thirty days following the receipt of the plans (297.7(1)).

Splitting a project to avoid the requirements of chapter 73A is improper and indefensible (West Harrison Community School District v. Iowa State Board of Public Instruction, App. 1984, 347 N.W. 2d 684).

"Public Improvement" includes the principal structures, works, component parts and accessories of any of the following:

1. Sanitary, storm, and combined sewers.
2. Drainage conduits, channels and levees.
3. Street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing with oil, oil and gravel or chloride.
4. Street lighting fixtures, connections and facilities.
5. Sewage pumping stations, and disposal and treatment plants.
6. Underground gas, water, heating, sewer and electrical connections located in streets for private property.
7. Sidewalks and pedestrian underpasses or overpasses.
8. Drives and driveway approaches located within the public right of way.
9. Waterworks, water mains and extensions.
10. Plazas, arcades and malls.
11. Parking facilities.
12. Removal of diseased or dead trees from any public place, publicly owned right of way or private property.
13. Traffic-control devices, fixtures, connections, and facilities (384.37(19)).

### **Public Hearing**

Before any municipality shall enter into any contract for any public improvement to cost twenty-five thousand dollars or more, the governing body proposing to make the contract shall adopt proposed plans and specifications and proposed form of contract, fix a time and place for hearing at the municipality affected or other nearby convenient place, and give notice by publication in at least one newspaper of general circulation in the municipality at least ten days before the hearing (73A.2).

### **Bids**

When the estimated total cost of construction, erection, demolition, alteration or repair of a public improvement exceeds twenty-five thousand dollars, the municipality shall advertise for bids on the proposed improvement by two publications in a newspaper published in the county in which the work is to be done. The first advertisement for bids shall be not less than fifteen days prior to the date set for receiving bids. The municipality shall let the work to the lowest responsible bidder submitting a sealed proposal. However, if in the judgment of the municipality, bids received are not acceptable, all bids may be rejected and new bids requested. A bid shall be accompanied, in a separate envelope, by a deposit of money or a certified check or credit union certified share draft in an amount to be named in the advertisement for bids as security that the bidder will enter into a contract for the doing of the work. The municipality shall fix the bid security in an amount equal to at least five percent, but not more than ten percent of the estimated total cost of the work. The checks, share drafts or deposits of money of the unsuccessful bidder shall be returned as soon as the successful bidder is determined, and the check, share draft or deposit of money of the successful bidder shall be returned upon execution of the contract documents. This section does not apply to the construction, erection, demolition, alteration or repair of a public improvement when the contracting procedure for the doing of the work is provided for in another provision of law (73A.18).

When emergency repairs costing more than twenty-five thousand dollars are necessary in order to prevent the closing of any school, the provisions of the law with reference to advertising for bids shall not apply, and in that event the board may contract for such emergency repairs without advertising for bids. However, before such emergency repairs can be made to any schoolhouse, it shall be necessary to procure a certificate from the area education agency administrator that such emergency repairs are necessary to prevent the closing of the school (297.8). Public hearing requirements would still apply.

No public officer or deputy thereof, if any, shall directly or indirectly or in any manner whatsoever, at any other time or in any other manner than as provided by law, open any sealed bid or convey or divulge to any person any part of the contents of a sealed bid, on any proposed contract concerning which a sealed bid is required or permitted by law (72.3).

A violation of the provisions of section 72.3 shall, in addition to criminal liability, render the violator liable, personally and on the violator's bond, if any, to liquidated damages in the sum of one thousand dollars for each violation, to inure to and be collected by the school corporation of which the violator is an officer (72.4).

Evaluations of bid proposals are public records which are confidential until the bids are opened and an award made. The possibility of misuse of nonconfidential public records does not justify placing restrictions on access to those records (OAG #79-3-3).

When a contract for a public improvement is to be awarded to the lowest responsible bidder, a resident bidder shall be allowed a preference as against a nonresident bidder from a state or foreign country which gives or requires a preference to bidders from that state or foreign country. The preference is equal to the preference given or required by the state or foreign country in which the nonresident bidder is a resident (73A.21).

Where a school district first solicited bids for removal of asbestos from two schools as one project, and awarded the contract without making determination that the lowest bidder was not a "responsible bidder," and after being informed by the lowest bidder's attorney of public bidding requirements and the fact that the project was subject to those requirements, rejected all bids, split the project into two contracts and did not solicit bids from the lowest bidder, the school district divided the repair project for improper, inadequate and indefensible purpose of evading the public bidding procedures (West Harrison Community School District v. Iowa State Board of Public Instruction, App.1984, 347 N.W. 2d 684).

Public notice in regard to competitive bidding assumes three elements:

- first, there should be an offering, or notice, extended to the public;
- second, an opportunity for competition; and
- third, a basis for an exact comparison of bids (OAG #80-9-4).

### **Recommended Procedure for Letting of Bids**

1. Solicit more than one bidder.
2. Advertise bids by two publications in a newspaper published in the county, the first advertisement not less than fifteen days prior to the date set for receiving bids.
3. Set definite time and place stipulated for receiving bids.
4. Require bid proposals be sealed.
5. Reject bids by telephone or telegraph.
6. Reject bids not filed timely.
7. Open bids in public, read publicly, and record in the board minutes.
8. Award the contract to the lowest responsible bidder or reject all bids as required by Iowa Code section 73A.18.
9. Take action on bids within five days if possible, but at least within 30 days.
10. Set bid security in whole dollar figures in an amount of at least five percent but not more than ten percent of the estimated total cost of the project.
11. Limit alternate bids to major items, and issue no alternate bids or special instructions subsequent to fifteen days before the bidding date.
12. If all the bids are rejected and new bids are requested, invite the original bidders to bid again.
13. Return checks or money deposits of unsuccessful bidders immediately after the successful bidder is named.
14. The contractor, rather than the owner, purchases the building materials.
15. Prior to proceeding with extra work or change order, provide the general contractor with written authorization from the board.

### **Architects**

The practice of architecture affects the public health, safety, and welfare and is subject to regulation and control in the public interest. Only persons qualified by the law of the state are authorized to engage in the practice of architecture in the state (544A.1).

A person shall not engage in the practice of engineering or land surveying in the state unless the person is a licensed professional engineer or a licensed land surveyor as provided in chapter 542B, except as permitted by section 542B.26 (542B.1).

An architect's fee is based on the original cost of the building. Where a change of materials must be made to meet lawful specifications and these materials are higher priced than the original ones, an architect cannot charge on the extra cost. The architect is supposed to know legal materials when signing the contract (OAG #58-1-7(L)).

Architect's fees can be paid from the proceeds of a bond issue. Such fees are considered as part of the cost of construction of a building and should be paid out of the same fund as a building (OAG #29-2-4(L), OAG #39-5-27(L)). If the bond issue fails, and the school board has employed an architect to make preliminary sketches and present informative data, the costs may be paid out of the general fund (1954 Op. Att'y Gen. 98 (#53-11-19)). Architect's fee for schematic phase of projects presented to the electorate may be paid from the general fund even when a bond issue is defeated. When a building is constructed with proceeds of a 67.5 cent schoolhouse levy [PPEL], the architect may be paid from such fund (1970 Op. Att'y Gen. 344 (#69-11-28)).

## **Preference**

Every school district shall give preference to Iowa labor in the constructing or building of any public improvement or works, and every contract entered into by any board, committee, officer, or other governing body of the state for the construction or building of any public improvement or works shall contain a provision requiring that preference shall be given to Iowa domestic labor in the constructing or building of such public improvements or works (73.3).

## **Contracts and Bonding**

Officers empowered to expend, or direct the expenditure of, public money of the state shall not make any contract for any purpose which contemplates an expenditure of such money in excess of that authorized by law (72.1).

Contracts based on bids made by mistake are not enforceable (1912 Op. Att'y Gen. 735 (#12-7-10)).

## **Bid Bonds**

Contracts for the construction of a public improvement shall, when the contract price equals or exceeds twenty-five thousand dollars, be accompanied by a bond, with surety, conditioned for the faithful performance of the contract, and for the fulfillment of other requirements as provided by law. The bond may also be required when the contract price does not equal that amount (573.2).

The obligation of the public corporation to require, and the contractor to execute and deliver said bond, shall not be limited or avoided by contract. A public corporation, with respect to a public improvement which is or has been competitively bid or negotiated, shall not require a contractor to procure a bond, as required under section 573.2, from a particular insurance or surety company, agent, or broker (573.3).

A deposit of money, certified check on a solvent bank of the county in which the improvement is to be located, a credit union certified share draft, state or federal bonds, bonds issued by a school corporation may be received in an amount equal to the amount of the bond and held in lieu of a surety on the bond, and when so received the securities shall be held on the terms and conditions applicable to a surety (573.4).

The amount of the bond shall be fixed, and the bond approved, by the official board or officer empowered to let the contract, in an amount not less than seventy-five percent of the contract price, and sufficient to comply with all requirements of said contract and to insure the fulfillment of every condition, expressly or impliedly embraced in said bond; except that in contracts where no part of the contract price is paid until after the completion of the public improvement the amount of said bond may be fixed at not less than twenty-five percent of the contract price (573.5).

Notwithstanding section 573.14, a public corporation may release retained funds upon completion of ninety-five percent of the contract under certain circumstances (573.15A).

Where a bidder's check is lost, there is no liability on the school district. The district should not furnish a bond to protect the drawee bank (OAG #25-12-2(L)).

## **Payment Schedule to Architects and Contractors**

Payments made under contracts for the construction of public improvements, unless provided otherwise by law, shall be made on the basis of monthly estimates of labor performed and material delivered, as determined by the project architect or engineer. The public corporation shall retain from each monthly payment not more than five percent of that amount which is determined to be due according to the estimate of the architect or engineer (573.12(1)).

Interest shall be paid to the contractor on any progress payment that is approved as payable by the public corporation's project architect or engineer and remains unpaid for a period of fourteen days after receipt of the payment request at the place, or by the person, designated in the contract, or by the public corporation to first receive the request, or for a time period greater than fourteen days, unless a time period greater than fourteen days is specified in the contract documents, not to exceed thirty days, to afford the public corporation a reasonable opportunity to inspect the work and to determine the adequacy of the contractor's performance under the contract (573.12(2)).

A public corporation shall not be permitted to plead noncompliance with section 573.12 and the retained percentage of the contract price, which in no case shall be more than five percent, constitutes a fund for the payment of claims for materials furnished and labor performed on the improvement and shall be held and disposed of by the public corporation as provided in chapter 573 (573.13).

The fund provided for in section 573.13 shall be retained by the public corporation for a period of thirty days after the completion and final acceptance of the improvement. If at the end of the thirty-day period claims are on file as provided the public corporation shall continue to retain from the unpaid funds a sum equal to double the total amount of all claims on file. The remaining balance of the unpaid fund, or if no claims are on file, the entire unpaid fund, shall be released and paid to the contractor (573.14).

No part of the unpaid fund due the contractor shall be retained as provided in chapter 573 on claims for material furnished, other than materials ordered by the general contractor or the general contractor's authorized agent, unless such claims are supported by a certified statement that the general contractor had been notified within thirty days after the materials are furnished or by itemized invoices rendered to contractor during the progress of the work of the amount, kind, and value of the material furnished for use upon the said public improvement (573.15).

When at least ninety-five percent of any contract for the construction of public improvements has been completed to the satisfaction of the public contracting authority and owing to conditions beyond the control of the construction contractor the remaining work on the contract cannot proceed for a period of more than sixty days, such public contracting authority may make full payment for the completed work and enter into a supplemental contract with the construction contractor involved on the same terms and conditions so far as applicable thereto for the construction of the work remaining to be done, provided however, that the contractor's surety consents thereto and agrees that the bond shall remain in full force and effect (573.27).

### **Refunds of Sales Tax on Construction Projects**

A governmental subdivision may make application to the department of revenue and finance for the refund of the sales, services, or use tax upon the gross receipts of all sales of goods, wares, or merchandise, or from services rendered, furnished, or performed, to a contractor, used in the fulfillment of a written contract with any political subdivision if the property becomes an integral part of the project under contract and at the completion of the project becomes public property and is devoted to educational uses (422.45(7)).

Such contractor shall state under oath, on forms provided by the department of revenue and finance, the amount of such sales of goods, wares or merchandise or services rendered, furnished, or performed and used in the performance of such contract, and upon which sales or use tax has been paid, and shall file such forms with the governmental unit which has made any written contract for performance by the contractor. The forms shall be filed by the contractor with the governmental unit before final settlement is made (422.45(7)(a)).

Such governmental unit shall, not more than one year after the final settlement has been made, make application to the department of revenue and finance for any refund of the amount of such sales or use tax which shall have been paid upon any goods, wares or merchandise, or services rendered, furnished, or performed, the application to be made in the manner and upon forms to be provided by the department, and the department shall forthwith audit such claim and, if approved, issue a warrant to the governmental unit in the amount of such sales or use tax which has been paid to the state of Iowa under the contract (422.45(7)(b)).

Any contractor who shall willfully make false report of tax paid under the provisions of this subsection shall be guilty of a simple misdemeanor and in addition thereto shall be liable for the payment of the tax and any applicable penalty and interest (422.45(7)(c)).

Contractors, subcontractors, and builders who enter into written construction contracts with governmental units are still required to remit sales tax on building materials, supplies and equipment to their suppliers or to pay a corresponding use tax. If the construction contract is a contract which includes machinery or equipment or a mixed contract, the machinery and equipment must be purchased tax free because these items will be resold. There would be no sales tax charged on the sale of machinery or equipment to a governmental unit since these sales are exempt under Iowa Code subsections 422.45 (5) and (8). In addition, the contractor is required to provide the governmental unit with a statement before final settlement of the contract, showing the amount of sales of goods, wares or merchandise or services rendered, furnished or performed and used in the performance of the contract, and the amount of sales and use taxes paid on said items. The department of revenue and finance provides Form 35-002 for this purpose. The governmental unit has one year after final settlement to file a claim for refund on Form 35-003 for sales and use taxes paid by the contractor. The failure of a contractor to remit taxes on materials, supplies and equipment used in the performance of a construction contract does not relieve the contractor of liability even through the refund was not or cannot be claimed (IAC 701--19.12).

Sales tax refunds may be spent by the school board for the original project which was the source of the refund but not for construction of a new building or for an addition to an existing building; funds received from sale of real estate may

be used for the purposes listed in Code; and contributions from the public may be used for the purposes designated by the donors but the voters [or board in some instances], not donors, must approve new construction (OAG #86-12-13).

## **Disposition of School Property**

### **Vacating School Facilities**

The board of directors shall determine the number of schools to be taught, divide the corporation into such wards or other divisions for school purposes as may be proper, determine the particular school which each child shall attend, and designate the period each school shall be held beyond the time required by law (279.11).

The board of directors of a school district by record action may discontinue any or all of grades seven through twelve and negotiate an agreement for attendance of the pupils enrolled in those grades in the schools of one or more contiguous school districts having accredited school systems (282.7(1)).

The board of directors shall notify the cities located within the school district, the counties in which the school district may be located, and the department of general services annually of the facilities and buildings owned by the public school corporation which are vacant and available to be leased or purchased (297.4).

#### **Procedures for Closing Facilities (Barker Guidelines)**

The state board of education has reviewed local board decisions involving the closing of attendance centers. The first time it addressed a school closing issue, the state board issued seven principles to guide local boards, commonly called the Barker Guidelines. These guideline were reviewed and approved by the Iowa Supreme Court in *Keeler v. Iowa Board of Public Instruction*, 331 NW2d 110, 112 (Iowa 1983).

1. A timeline should be established in advance for the carrying out of procedures involved in making an important decision. All aspects of such timelines would naturally focus upon the anticipated date that the board of directors would make its final decision in the matter.
2. All segments of the community in the school district should be informed that a particular important decision is under consideration by the board of directors.
3. The public should be involved in providing sufficient input into the study and planning involved in important decision making.
4. Sufficient research, study and planning should be carried out by the board and groups and individuals selected by the board. Such things as student enrollment statistics, transportation costs, financial gains and losses, program offerings, plant facilities, and staff assignment need to be considered carefully.
5. There should be an open and frank public discussion of the facts and issues involved.
6. A proper record should be made of all the steps taken in the making of the decision.
7. The final decision must be made in an open public meeting and a record be made thereof (1 D.P.I. App Dec. 145 (1977)).

#### **Disposition with School Budget Review Committee Approval**

The SBRC may authorized a district to spend a reasonable and specified amount from its unexpended cash balance for either of the following purposes:

The costs associated with the demolition of an unused school building, or the conversion of an unused school building for community use, in a school district involved in a dissolution or reorganization under chapter 275, if the costs are incurred within three years of the dissolution or reorganization (257.31(7)).

#### **Disposition by Sales and Leases**

Monies received from the condemnation, sale, or other disposition for public purposes of schoolhouses, school sites, or both schoolhouses and school sites shall be deposited in the PPEL fund and may without a vote of the electorate be used for the purchase of school sites or the erection or repair of schoolhouses or both as ordered by the board of directors of such school district (279.41).

The board of directors of a school district may sell, lease, or dispose of, in whole or in part, a schoolhouse, site, or other property belonging to the district. Before the board may sell, lease for a period in excess of one year, or dispose of any property belonging to the school, the board shall hold a public hearing on the proposal. After the public hearing, the board may make a final determination on the proposal contained in the resolution. However, property having a value of not more than five thousand dollars, other than real property, may be disposed of by any procedure which is adopted

by the board and each sale shall be published by at least one insertion each week for two consecutive weeks in a newspaper having general circulation in the district (297.22(1)).

The voters at the regular election shall have the powers to direct the sale, lease, or other disposition of any schoolhouse or site or other property belonging to the corporation, and the application to be made of the proceeds thereof, provided, however, that nothing herein shall be construed to prevent the sale, lease, exchange, gift, or grant and acceptance of any interest in real or other property by the board of directors without an election to the extent authorized in section 297.22 (278.1(2)).

A proposition to sell a school site or school building and use the proceeds in a certain way is a single proposition and may be so stated on a ballot. However, if more than one public measure is to be voted upon, they may be printed on the same ballot but as single propositions, one below the other with one-inch space between them (1944 Op. Att'y Gen. 139 (#44-3-4)).

Proceeds from the sale or disposition of real property shall be placed in the PPEL fund. Proceeds from the sale, lease or disposition of property other than real property shall be placed in the general fund. Proceeds from the lease of real or other property shall be placed in the general fund (297.22).

If the real property contains less than two acres, is located outside of a city, is not adjacent to a city and was previously used as a schoolhouse site, the procedure contained in sections 297.15 through 297.20 shall be followed in lieu of section 297.22 for sale, lease, or disposition of real property belonging to the district (297.22(1)).

The board of directors of a school district may sell, lease, exchange, give, or grant and accept any interest in real property to, with, or from a county, municipal corporation, school district, township, or AEA if the real property is within the jurisdiction of both the grantor and grantee (297.22(2)).

The board of directors of a school district may lease a portion of an existing school building in which the remaining portion of the building will be used for school purposes for a period of not to exceed five years. The lease may be renewed at the option of the board. The notice and public hearing requirements of this section do not apply to the lease of a portion of an existing school building. A school district shall pay out of the revenue from a lease to the state of Iowa, and to the city, school district and any other political subdivision authorized to levy taxes, an amount as determined by this section. The amount shall be determined by applying the annual tax rate of the taxing district to the assessed value of the portion of the building leased, prorated for the term of the lease during the appropriate taxing period. The provisions of this section relating to the payment of property tax because of leases shall only apply to leases to private, for-profit entities which lease a portion of the school building for a period of thirty or more consecutive days (297.22(2)).

The board of directors of a school district may sell, lease, or dispose of a student-constructed building and the property on which the student-constructed building is located, and may purchase sites for the erection of additional structures, by any procedure which is adopted by the board (297.22(3)).

Sections 297.22 shall be construed as independent of the power vested in the electors by section 278.1, and as additional to such power (297.25).

The governor shall issue an executive order requiring all state agencies to consider the leasing of a vacant facility or building which is appropriately located and which is owned by a public school corporation before a state agency leases, purchases, or constructs a facility or building. The state agency may lease a facility or building owned by a public school corporation with an option to purchase the facility or building in compliance with section 297.22. The lease shall provide that the public school corporation may terminate the lease if the corporation needs to use the facility or building for school purposes. The public school corporation shall notify the state agency at least thirty days before the termination of the lease (7.20).

When voters authorize the board of directors to sell and convey or lease or otherwise dispose of certain real property such authorization does not give the board power to deal with the real property differently than other property which they are otherwise authorized to sell or lease (1968 Op. Att'y Gen. 115 (#67-5-23)).

A school board has six months during which it can seek the best bid for property advertised for sale (OAG #64-8-7(L)).

The school board may give free of charge an old schoolhouse site to a town under section 297.22 (OAG #71-9-14).

Where a school district board conveys real estate to another governmental unit by gift, it does not hold power to spend school funds to demolish school buildings to satisfy the wishes of the donee of the gift because such expenditure would not be for a school purpose (OAG #82-1-1(L)).

Payment for school property must be made in cash. No mortgage on real estate may be accepted. The authority to sell does not give authority to accept anything but cash in settlement for property (OAG #32-8-6(L)).

Neither by board action or on petition could a school building be sold if there weren't sufficient remaining schoolhouses to house the pupils (OAG #52-1-7).

AEAs may not buy property from sources other than school districts (OAG #94-12-3(L)).

Any school building or any school site, the title of which is vested in the state of Iowa by reason of it having been provided by state mining camp funds for schools in mining camps, shall be sold by the department when the director of the department of education determines it is no longer needed for school purposes (297.26).

If there is any school equipment, supplies, or other usable school materials, such as desks, blackboards, playground equipment, or the like, in or on said buildings or grounds, the director of the department of education may remove the same and divert their use to other public school districts (297.32).

### **Disposition by Reversion of Sites**

Any real estate, owned by a school district, containing less than two acres, situated wholly outside of a city, and not adjacent thereto, and heretofore used as a schoolhouse site shall revert to the then owner of the tract from which the same was taken, provided that said owner of the tract last aforesaid shall, within the time hereinafter prescribed, pay the value thereof to such school district. Any such schoolhouse site containing two or more acres shall be subject to the law as otherwise provided (297.15).

In case the school district and said owner of the tract from which such school site was taken, do not agree as to the value of such site, the chief judge of the judicial district of the county in which the greater part of such school district is situated, shall, on the written application of either party, appoint three disinterested voters of the county from the list of person eligible to serve as compensation commissioners to appraise the site (297.16).

The county sheriff shall give notice to both parties of the time and place of making such appraisal, which notice shall be served in the same manner and for the same time as for the commencement of action in the district court (297.17).

Such appraisers shall inspect the premises and, at the time and place designated in the notice, appraise said site in writing, which appraisal, after being duly verified, shall be filed with the county sheriff (297.18).

If the owner of the tract from which said site was taken fails to pay the amount of such appraisal to such school district within twenty days after the filing of same with the county sheriff, the school district may sell said site to any other person at the appraised value, or may sell the same at public sale to the highest bidder (297.19).

If there are improvements on said site, the improvements may, at the request of either party, be appraised and sold separately (297.20).

A school board may sell improvements on a site to the owner at a price mutually agreed upon, or it may sell to the owner at a price higher than the appraised value. The landowner has no equity in improvements placed on the site with public funds (OAG #54-10-28(L)).

Where a large farm was divided into tracts and two of the tracts adjoin the school ground and both owners want the school site, they should draw lots. If not, the site should be sold according to law (OAG #55-1-17).

### **Disposition of Land to the Federal Government**

Whenever the federal government, or any agency or department thereof shall have heretofore located or shall hereafter locate in any county an ordnance plant or other project which may be deemed desirable for the development of the national defense or for the purpose of flood control, and for the purpose of so locating such plant or project shall have heretofore determined, or shall hereafter determine, that real property and improvements thereon owned by school districts is required, the board of directors of such school districts by resolution is hereby authorized to sell and convey



such property at a price and upon terms as may be agreed upon, any such instruments of conveyance to be executed on behalf of such school districts by the president of such district (274.39).

The proceeds of the sale of the property of the school district shall be deposited with the treasurer of the county and applied so far as necessary to the payment of the outstanding indebtedness of such school district (274.41).

If the federal government, or any agency or department of the federal government, determines that certain real property making up a portion of a school district is required, the director of the department of education may by resolution adjust the boundaries of school districts in which the federally owned property is located and the boundaries of adjoining school districts so as to effectively provide for the schooling of children residing within all of the districts (274.42).

The officers of the altered district shall relinquish to the proper officers of such adjoining district or districts all funds, claims for taxes, credits, and such other personal property in such a manner as the director of the department of education shall direct, which said funds, credits, and personal property shall become the property of such adjoining district or districts as enlarged, to be used as the boards of directors of such districts may direct (274.43).

### **Davis-Bacon and Related Acts (41 CFR 1-18.7; 19 CFR 1, 3, and 5)**

This law is applicable to most federally-financed or assisted contracts of \$2,000 or greater for the construction, alteration, or repair, including painting and decorating, of public buildings or public works. It provides that all laborers and mechanics employed under such contracts be paid the wage rates and fringe benefits found by the department of labor to be prevailing on similar projects for corresponding classifications of laborers and mechanics in the locality in which the work is to be performed and included in a wage decision in the contract. A contract which is subject to the Davis-Bacon Act or most of the related acts is also subject to the Copeland (Anti-Kickback) Act which prohibits illegal deductions or kickbacks of wages. Such contracts also require the submission of certified payroll records on a weekly basis to the contracting agency.